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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

CARL EDWARD YOUNG,

Defendant and Appellant.

C069606

(Super. Ct. No. 10F07088)

A jury convicted defendant Carl Edward Young of being a felon in possession of a firearm. The trial court denied defendant's motion to dismiss his prior strike conviction and sentenced him to six years in prison.

Defendant contends the trial court abused its discretion in refusing to dismiss his prior strike conviction. We conclude, however, that the trial court considered the relevant factors in finding that defendant fell within the spirit of the three strikes law, and the trial court did not abuse its discretion in denying defendant's motion to dismiss the strike.

We will affirm the judgment.

BACKGROUND

Sacramento Police Officers James Gannon and Allen Perez saw defendant riding a bicycle on October 27, 2010. When Officer Gannon tried to engage defendant in conversation, defendant “took off” on the bicycle. The officers pursued defendant, first in their car, then on foot.

During the pursuit, Officers Gannon and Perez saw defendant throw the backpack he was carrying. After apprehending defendant, Officer Gannon asked defendant if there was a weapon inside the backpack, and defendant said there was. Officer Gannon found a .357 caliber handgun loaded with hollow point bullets inside the backpack.

Officer Perez read defendant his *Miranda*¹ rights. Defendant waived his rights and wanted to talk to the officers. Defendant told the officers he obtained the gun a couple of hours earlier from someone named “Chris.” He said he needed the gun because of recent gang shootings in the area; his friend’s car was recently “shot up.” He also mentioned another gang-related shooting that recently occurred in a nearby area of Sacramento.

The jury convicted defendant of being a felon in possession of a firearm (Pen. Code, former § 12021, subd. (a)(1)) and defendant admitted that he had a prior conviction for assault with a firearm (Pen. Code, § 245, subd. (a)(2)), a serious felony (Pen. Code, §§ 667, subd. (a), 1192.7, subd. (c)). Defendant made a *Romero*² motion to dismiss the prior strike conviction, but the trial court denied the motion. The trial court sentenced defendant to six years in prison.

¹ *Miranda v. Arizona* (1996) 384 U.S. 436.

² *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*).

DISCUSSION

Defendant contends the trial court abused its discretion in denying his motion to dismiss the prior strike conviction.

In *Romero*, the California Supreme Court held that a trial court has the discretion to dismiss a prior strike conviction in furtherance of justice. (*Romero, supra*, 13 Cal.4th at p. 504.) Of course, it is also within the trial court's discretion to decline to dismiss a prior strike conviction, and such a decision is reviewed under the deferential abuse of discretion standard. (*People v. Carmony* (2004) 33 Cal.4th 367, 374.)

In ruling on a *Romero* motion, the trial court "must consider whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme's spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies." (*People v. Williams* (1998) 17 Cal.4th 148, 161 (*Williams*).)

Dismissal of a strike is a departure from the sentencing norm. Therefore, in reviewing a *Romero* decision, we will not reverse for abuse of discretion unless the defendant shows the decision was "so irrational or arbitrary that no reasonable person could agree with it." (*People v. Carmony, supra*, 33 Cal.4th at p. 377.) Reversal is justified where the trial court was unaware of its discretion to strike a prior strike, or refused to do so at least in part for impermissible reasons. (*Id.* at p. 378.) But where the trial court, aware of its discretion, " 'balanced the relevant facts and reached an impartial decision in conformity with the spirit of the law, we shall affirm the trial court's ruling, even if we might have ruled differently in the first instance' [citation]." (*Ibid.*)

Defendant argues the present offense and his prior criminal history fall outside the spirit of the three strikes law based on the factors set forth in *Williams*. Defendant notes that his prior strike offense was seven years before the current offense, and although it was a violent crime -- he put a gun in the victim's face and threatened to kill her -- it

“may well have been prompted by anger and jealousy arising from a failed romance.” Defendant acknowledges that his criminal record is lengthy, but he argues that most of his prior offenses are “minor,” consisting primarily of misdemeanor and nonviolent offenses.

Defendant further argues that although the present offense is serious, “the circumstances surrounding it must be recognized as mitigating.” Defendant asserts that since 1999, he has turned his life around. He is married with four children, he “moved away from the gangs” so that his children would have a father, and he simply had the gun for protection.

Nonetheless, the record shows that the trial court considered the relevant factors and determined that defendant fell within the spirit of the three strikes law. Moreover, the record supports the trial court’s assessment of defendant’s background, character and prospects. Defendant’s criminal record extends back to 1993 and includes five juvenile adjudications and one juvenile violation of probation. Defendant has numerous convictions as an adult for crimes including possession of a firearm by a felon (Pen. Code, former § 12021, subd. (a)(1)), resisting arrest (Pen. Code, § 148, subd. (a)), and vehicle theft (Veh. Code, § 10851, subd. (a)). Indeed, defendant was on probation when he committed the current offense. Defendant’s history of criminal conduct includes threatening physical injury to his school principal, being verbally abusive to law enforcement, physically resisting law enforcement, and threatening to inflict physical injury on a peace officer.

In ruling on defendant’s *Romero* motion, the trial court stated: “[T]his is a case which the Court feels very clearly does not come outside the provisions of the strike law, nor would it be in the interests of justice to dismiss a strike in this case in light of the recent and [*sic*] the pattern of criminal conduct over the past decade, notwithstanding [counsel’s] argument that [defendant] is trying to distance himself from gang activity and

criminal activity. That is not, strictly speaking, born[e] out by his actual actions and the record.”

“Where the record demonstrates that the trial court balanced the relevant facts and reached an impartial decision in conformity with the spirit of the law, we shall affirm the trial court’s ruling” (*People v. Myers* (1999) 69 Cal.App.4th 305, 310.) The trial court did not abuse its discretion in denying defendant’s motion to dismiss the prior strike conviction.

DISPOSITION

The judgment is affirmed.

MAURO, J.

We concur:

RAYE, P. J.

MURRAY, J.